

# HOUSE BILL No. 1514

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-4-1-18; IC 5-11-5-1.

**Synopsis:** Accounting for public funds. Increases the required surety bond for certain officials, and provides that the state board of accounts may require a higher surety bond for officials who have engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds. Requires a deputy examiner, field examiner, or private examiner to make a preliminary report to the state examiner if: (1) a substantial amount of public funds has been misappropriated or diverted or is unaccounted for; (2) there is a reasonable likelihood that the final examination report will include a finding that the entity that is the subject of the report failed to observe a uniform compliance guideline or failed to comply with a specific law; or (3) the malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for the public funds was committed by the officer or employee who is primarily responsible for ensuring compliance with laws regarding maintaining and accounting for the funds. Requires the state examiner to provide a copy of the report to the attorney general, and requires the attorney general to bring a civil action against the delinquent employee or the official bond to recover misappropriated funds. Authorizes the attorney general to petition a court to freeze the assets of the delinquent employee. Makes other changes.

**Effective:** July 1, 2009.

**GiaQuinta**

January 14, 2009, read first time and referred to Committee on Ways and Means.



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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1514

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-4-1-18, AS AMENDED BY P.L.146-2008,  
2 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2009]: Sec. 18. (a) Except as provided in subsection (b), the  
4 following city, town, county, or township officers and employees shall  
5 file an individual surety bond:

6 (1) City judges, controllers, clerks, and clerk-treasurers.

7 (2) Town judges and clerk-treasurers.

8 (3) Auditors, treasurers, recorders, surveyors, sheriffs, coroners,  
9 assessors, and clerks.

10 (4) Township trustees.

11 (5) Those employees directed to file an individual bond by the  
12 fiscal body of a city, town, or county.

13 (6) Township assessors (if any).

14 (b) The fiscal body of a city, town, county, or township may by  
15 ordinance authorize the purchase of a blanket bond or a crime  
16 insurance policy endorsed to include faithful performance to cover the  
17 faithful performance of all employees, commission members, and

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persons acting on behalf of the local government unit, including those officers described in subsection (a).

(c) **Except as provided in subsections (h) and (i),** the fiscal bodies of the respective units shall fix the amount of the bond of city controllers, city clerk-treasurers, town clerk-treasurers, Barrett Law fund custodians, county treasurers, county sheriffs, circuit court clerks, township trustees, and conservancy district financial clerks as follows:

(1) The amount must equal ~~fifteen~~ **twenty** thousand dollars ~~(\$15,000)~~ **(\$20,000)** for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2).

(2) The amount may not be less than ~~fifteen~~ **twenty** thousand dollars ~~(\$15,000)~~ **(\$20,000)** nor more than three hundred thousand dollars (\$300,000).

County auditors shall file bonds in amounts of not less than fifteen thousand dollars (\$15,000), as fixed by the fiscal body of the county. The amount of the bond of any other person required to file an individual bond shall be fixed by the fiscal body of the unit at not less than ~~eight ten~~ thousand ~~five hundred~~ dollars ~~(\$8,500)~~ **(\$10,000)**.

(d) **Except as provided in subsection (j),** a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file an individual surety bond in an amount:

(1) fixed by the board of directors of the solid waste management district; and

(2) that is at least ~~fifteen~~ **twenty** thousand dollars ~~(\$15,000)~~ **(\$20,000)**.

(e) Except as provided under subsection (d), a person who is required to file an individual surety bond by the board of directors of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file a bond in an amount fixed by the board of directors.

(f) In 1982 and every four (4) years after that, the state examiner shall review the bond amounts fixed under this section and report in an electronic format under IC 5-14-6 to the general assembly whether changes are necessary to ensure adequate and economical coverage.

(g) The commissioner of insurance shall prescribe the form of the bonds or crime policies required by this section, in consultation with the commission on public records under IC 5-15-5.1-6.

**(h) Notwithstanding subsection (c), the state board of accounts may fix the amount of the bond for a city controller, city clerk-treasurer, town clerk-treasurer, Barrett Law fund custodian, county treasurer, county sheriff, circuit court clerk, township**

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trustee, or conservancy district financial clerk at an amount that exceeds twenty thousand dollars (\$20,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond. However, the bond amount may not exceed three hundred thousand dollars (\$300,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the officer engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(i) Notwithstanding subsection (c), the state board of accounts may fix the amount of the bond for any person who is not described in subsection (h) and is required to file an individual bond at an amount that exceeds ten thousand dollars (\$10,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the person engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(j) Notwithstanding subsection (d), the state board of accounts may fix the amount of the bond for a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) at an amount that exceeds twenty thousand dollars (\$20,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the controller engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

SECTION 2. IC 5-11-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Whenever an examination is made under this article, a report of the examination shall be made. The report must include a list of findings and shall be signed and verified by the examiner making the examination. A finding that is critical of an examined entity must be based upon one (1) of the following:

- (1) Failure of the entity to observe a uniform compliance guideline established under IC 5-11-1-24(a).
- (2) Failure of the entity to comply with a specific law.

A report that includes a finding that is critical of an examined entity must designate the uniform compliance guideline or the specific law upon which the finding is based. The reports shall immediately be filed

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with the state examiner, and, after inspection of the report, the state examiner shall immediately file one (1) copy with the officer or person examined, one (1) copy with the auditing department of the municipality examined and reported upon, and one (1) copy in an electronic format under IC 5-14-6 of the reports of examination of state agencies, instrumentalities of the state, and federal funds administered by the state with the legislative services agency, as staff to the general assembly. Upon filing, the report becomes a part of the public records of the office of the state examiner, of the office or the person examined, of the auditing department of the municipality examined and reported upon, and of the legislative services agency, as staff to the general assembly. A report is open to public inspection at all reasonable times after it is filed. If an examination discloses malfeasance, misfeasance, or nonfeasance in office or of any officer or employee, a copy of the report, signed and verified, shall be placed by the state examiner with the attorney general. The attorney general shall diligently institute and prosecute civil proceedings against the delinquent officer, or upon the officer's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(b) Before an examination report is signed, verified, and filed as required by subsection (a), the officer or the chief executive officer of the state office, municipality, or entity examined must have an opportunity to review the report and to file with the state examiner a written response to that report. If a written response is filed, it becomes a part of the examination report that is signed, verified, and filed as required by subsection (a).

(c) Except as required by subsection (b), it is unlawful for any deputy examiner, field examiner, or private examiner, before an examination report is made public as provided by this section, to make any disclosure of the result of any examination of any public account, except to the state examiner or if directed to give publicity to the examination report by the state examiner or by any court. If an examination report shows or discloses the commission of a crime by any person, it is the duty of the state examiner to transmit and present the examination report to the grand jury of the county in which the crime was committed at its first session after the making of the examination report and at any subsequent sessions that may be required. The state examiner shall furnish to the grand jury all evidence at the state examiner's command necessary in the investigation and prosecution of the crime.

**(d) If, during an examination under this article, a deputy**

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1 examiner, field examiner, or private examiner acting as an agent  
 2 of the state examiner determines that the following conditions are  
 3 satisfied, the examiner shall report the determination to the state  
 4 examiner:

5 (1) A substantial amount of public funds has been  
 6 misappropriated or diverted or is unaccounted for.

7 (2) There is a reasonable likelihood that the final report under  
 8 subsection (a) will include a finding that the entity failed to  
 9 observe a uniform compliance guideline established under  
 10 IC 5-11-1-24(a) or a finding that the entity failed to comply  
 11 with a specific law.

12 (3) The malfeasance, misfeasance, or nonfeasance that  
 13 resulted in the misappropriation of, diversion of, or inability  
 14 to account for the public funds was committed by the officer  
 15 or employee who is primarily responsible for ensuring  
 16 compliance with laws regarding maintaining and accounting  
 17 for the funds.

18 (e) After receiving a preliminary report under subsection (d),  
 19 the state examiner shall provide a copy of the report to the  
 20 attorney general. The attorney general shall diligently institute and  
 21 prosecute civil proceedings against the delinquent officer or  
 22 employee, or upon the officer's or employee's official bond, or both,  
 23 and against any other proper person that will secure to the state or  
 24 to the proper municipality the recovery of any funds  
 25 misappropriated, diverted, or unaccounted for.

26 (f) In an action under subsection (e), the attorney general may  
 27 petition a court to freeze the assets of the delinquent officer or  
 28 employee until the final report under subsection (a) is completed.  
 29 If the final report under subsection (a) confirms the findings in the  
 30 preliminary report under subsection (d), the attorney general may  
 31 proceed to take all necessary action to secure the misappropriated,  
 32 diverted, or unaccounted for funds, including the collection of  
 33 assets that were frozen by the court. If the final report under  
 34 subsection (a) does not confirm the findings in the preliminary  
 35 report under subsection (d), the court shall vacate the order  
 36 freezing the assets of the officer or employee.

37 (g) A preliminary report under subsection (d) is not a part of the  
 38 public records of the state examiner until the final report under  
 39 subsection (a) is issued.

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